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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FIVE

In re J.L., a Person Coming Under the Juvenile Court Law.

SAN FRANCISCO HUMAN SERVICES AGENCY,

Plaintiff and Respondent,

v.

C.L.,

Defendant and Appellant.

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A145972

(San Francisco County Super. Ct. No. JD13-3283)

Following a Welfare and Institutions Code section 366.26 hearing (.26 hearing), the juvenile court terminated C.L.'s (mother) parental rights as to J.L. and ordered adoption as the permanent plan.[1] Mother appeals. She contends the termination order must be reversed because: (1) the San Francisco Human Services Agency's (Agency) .26 reports were inadequate; and (2) the court failed to apply the statutory preference for placing J.L. with a relative.

We disagree and affirm.

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[1] Unless noted, all further statutory references are to the Welfare and Institutions Code. Alleged father Paul F. (father) is not a party to this appeal.

FACTUAL AND PROCEDURAL BACKGROUND

Detention, Jurisdiction, and Disposition

J.L. was born six weeks prematurely in October 2013. A few days later, the Agency filed a petition alleging J.L. came within section 300, subdivision (b). The operative petition alleged mother: (1) had been diagnosed as bipolar and schizophrenic and her "untreated mental health . . . and actions" posed a serious threat to J.L.'s well-being; (2) admitted drinking alcohol while pregnant and had "a substance/alcohol abuse problem" impacting her ability to parent J.L.; and (3) father was unable to protect J.L. from mother's abuse. The court detained J.L. and placed him in foster care.

According to the jurisdiction report, mother had been diagnosed with bipolar disorder in 2004. In October 2013, she arrived at the hospital at 34 weeks pregnant, complaining of stomach pain. She was visibly pregnant but "did not know she was pregnant." Mother had an emergency cesarean section but could not process her "medical condition or mental disorder." She was placed on a section 5150 hold and diagnosed with possible schizoaffective disorder. The hospital's psychiatric staff recommended mother not care for J.L. because of her paranoia and lack of insight into her "psychiatric condition[.]"

The Agency planned to pursue adoption with a relative as the "optimal" plan for J.L. but noted there were "no local relatives [ ] appropriate for placement[.]" Mother spent time with "local family, including her mother and her brother . . . [but] they are currently homeless, and financially unstable." J.L.'s maternal aunt, T.L. (aunt) — who lived in Arkansas — was a possible relative for placement; the social worker intended to have aunt assessed as a potential caregiver. Mother, however, did not want aunt "or any other family member to care" for J.L. and she became "agitated when discussing the topic."

Mother submitted to jurisdiction. The court adjudged J.L. a dependent of the court (§ 300, subd. (b)) and determined by clear and convincing evidence returning him to mother's custody would cause substantial danger to his physical and emotional well-being. The court ordered reunification services.

Six-Month Review Hearing and the Agency's Section 388 Petition

The Agency's six-month review report recommended terminating reunification services and setting a .26 hearing. Mother visited J.L., but she denied having mental health issues, missed drug tests, and had not begun several components of her case plan. During visits, mother rarely interacted with J.L.: she "held him and that was about it." J.L.'s maternal grandmother and uncle (uncle) visited "sporadically" during mother's supervised visits. At the conclusion of the six-month review hearing in June 2014, the court terminated reunification services and scheduled the .26 hearing for October 2014.[2] J.L. remained in foster care and mother continued to receive supervised visits.

In July 2014, the Agency filed a section 388 petition requesting the court vacate J.L.'s foster care placement and place him with aunt in Arkansas. According to the Agency, J.L. needed permanency and aunt was "eager and able to adopt" him. The court granted the petition and J.L. moved in with aunt in August 2014. Mother's supervised visits ended when J.L. moved to Arkansas.

Initial .26 Reports and the Agency's Section 387 Petition

The Agency's initial .26 report recommended terminating parental rights and placing J.L. for adoption. According to the Agency, aunt was "more than capable and willing to raise" J.L. and he was doing well in her care. In a November 2014 addendum .26 report, however, the Agency reported aunt felt "overwhelmed" and could not adopt J.L. Aunt apologized for uprooting J.L. "from the only family he knew of in San Francisco" and — when asked about other relatives who would consider adopting J.L. — did not mention uncle. The court continued the .26 hearing to May 2015. In February 2015, J.L. returned to foster care in San Francisco. In April 2015, the Agency filed a supplemental section 387 petition recommending the court place J.L. with aunt's friends, D.C. and his wife (collectively D.C.).[3]

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[2] This court summarily dismissed mother's writ petition. (*C.L. v. Superior Court of the City and County of San Francisco* (July 31, 2014, A142242).)

[3] When an agency seeks to change the placement of a dependent child from a parent or relative's care to a more restrictive placement, such as foster care, it must file a section

The Agency's second .26 report, filed in May 2015, recommended terminating parental rights and freeing J.L. for adoption. The report noted D.C. was "very committed to providing permanency" for J.L., and that the joint adoptability assessment and adoptive home study had been completed. The report described mother's supervised visitation, which ended in August 2014, and noted J.L.'s "[m]aternal grandmother and uncle visited . . . sporadically" when mother had supervised visits. According to the report, mother did not request visits with J.L. until two months after he returned from Arkansas. In May 2015, the court denied mother's section 388 petition requesting reinstatement of reunification services.

June 2015 Addendum Report and .26 Hearing

In its June 2015 addendum report, the Agency again recommended terminating parental rights and freeing J.L. for adoption. The report noted D.C. wanted to adopt J.L. and would provide him with a safe and loving home. According to the Agency, "[n]o additional relatives have come forward to request that they be assessed for placement of [J.L.] in their home. . . . [M]other gave [uncle's] name to [the Agency] and said she would give his contact information later. She wanted [uncle] to be assessed" for placement, but "as of the date of this report" she had not provided uncle's contact information.

At the .26 hearing in July 2015, the social worker testified J.L. was adoptable and it was in his best interest to terminate parental rights. The social worker also testified mother and J.L. were not bonded. D.C. was nearing the end of the adoption approval process; once the social worker received approval, she planned to move J.L. to D.C.'s residence. Mother testified she moved to Arkansas to visit J.L. and described her visits

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387 petition. (*In re T.W.* (2013) 214 Cal.App.4th 1154, 1161.) In April 2015, the court found prima facie evidence supported the section 387 petition and approved J.L.'s foster care placement. At the May 2015 jurisdictional and disposition hearing on the section 387 petition, counsel for mother stated she "would like" uncle "to be considered" as an adoptive parent. "Apparently, she had given the Agency his information sometime ago; and just had another conversation with [the social worker] regarding him to be considered as a placement option." Counsel for the minor stated, "I know nothing" about "uncle. [¶] . . . [W]e're way past dispo[sition]."

with him. She denied having "psychiatric problems" and claimed she could care for J.L. At the conclusion of the .26 hearing, the court terminated mother's parental rights and concluded there was clear and convincing evidence J.L. would be adopted. The court selected adoption as the permanent plan and continued J.L.'s foster care placement. Later, the court placed J.L. with D.C.

DISCUSSION

I.

Mother's Challenge to the Adequacy of the .26 Reports Fails

Mother contends the .26 reports were inadequate because they did not: (1) "explain the nature and quality of the relationship J.L. shared with" her; or (2) describe her visits with J.L. after August 2014. When a court sets a .26 hearing, the Agency must "prepare an assessment" including, among other things, "[a] review of the amount of and nature of any contact between the child and his or her parents and other members of his or her extended family since the time of placement." (§ 366.26, subd. (i)(1)(B).)

Mother has waived her claim regarding the purported lack of information in the .26 reports. Several cases support our conclusion. (*In re Urayna L.* (1999) 75 Cal.App.4th 883, 887 (*Urayna L.*); *In re Brian P.* (2002) 99 Cal.App.4th 616, 623 [parent may waive objection that an adoption assessment does not comply with statute].) *Urayna L.* is instructive. In that case, the mother argued the juvenile court erred by terminating her parental rights because the .26 report did not describe the relationship between the child and the maternal grandmother. (*Urayna L., supra*, 75 Cal.App.4th at p. 886.) The appellate court concluded the mother waived the claim "by failing to raise the *adequacy* of the report below[.]" (*Ibid.*) As the *Urayna L.* court explained, the department's report listed "the contacts between [the child and her grandmother]; mother's contention that the report was not adequate is just the kind of issue which should be developed by putting on one's own evidence or cross-examining the person who prepared the report. In other words, once [the department] puts on some evidence of the contacts, and their nature (including the fact that they were unremarkable, as signified by the lack of any statements that the minor was particularly attached to, or particularly fearful of, the relative), it is up

to the parent to produce evidence that, in fact, the minor would benefit from continuing the relationship so much that termination of the parental rights is inappropriate." (*Id.* at p. 887.)

As in *Urayna L.*, mother did not object to the .26 reports, nor claim they were inadequate because they did not describe her relationship with J.L. or her visits with him after August 2014. "[M]other's contention that the report[s] [were] not adequate is just the kind of issue which should be developed by putting on one's own evidence or cross-examining the person who prepared the report[s]" at the .26 hearing. (*Urayna L.*, *supra*, 75 Cal.App.4th at p. 887.) Like the *Urayna L.* court, we conclude mother waived her claim regarding the adequacy of the .26 reports. (*Id*. at p. 886.)

Mother's claim also fails on the merits. (*In re Lorenzo C.* (1997) 54 Cal.App.4th 1330 (*Lorenzo C.*).) In *Lorenzo C.*, the father claimed the department's .26 report was inadequate because it did not describe the amount of time he spent with his child during the dependency proceedings. (*Id.* at p. 1336.) The appellate court rejected this argument, concluding the report was "adequate" and that a .26 report is not deficient merely because it does not "break down by hours and minutes the time" the parent visits his or her child. (*Ibid.*) *Lorenzo C.* also determined "the precise amount of time" the father spent with his son would not have established the beneficial relationship exception to adoption under section 366.26, subdivision (c)(1)(B)(i). (*Lorenzo C.*, *supra,* 54 Cal.App.4th at p. 1337.) The same is true here. The .26 reports described mother's supervised visits until August 2014, when J.L. moved to Arkansas, and noted mother did not request visitation with J.L. until two months after he returned to San Francisco. "There is no requirement in [section 366.26, subdivision (c)(1)(B)] that the social worker describe the 'actual amount' of time, by minutes, hours or other measure, that a parent and child have spent together during the dependency." (*Ibid*.)

Moreover, and as in *Lorenzo C.*, cataloguing the precise amount of time mother spent with J.L. while he lived in Arkansas would not have established the beneficial relationship exception. J.L. lived in foster care for the majority of his life, and never with mother. Mother's visits were supervised, and she rarely interacted with J.L.: she "held

him and that was about it." At the .26 hearing, the social worker testified J.L. and mother were not adequately bonded and it was in J.L.'s best interest to terminate mother's parental rights. Additionally, mother testified about her visits with J.L. in Arkansas. The inclusion of information in the .26 reports about mother's purported relationship with J.L. or her visitation with him from August 2014 to February 2015 would not have demonstrated "a *parental* relationship" necessary for the beneficial relationship exception to apply. (*In re Jasmine D.* (2000) 78 Cal.App.4th 1339, 1350.)

II.

Mother's Section 361.3 Claim Has No Merit

Mother claims the Agency failed to apply the statutory preference for placing a dependent child with a relative. Section 361.3 gives "preferential consideration" to a request by a relative for placement, which means "the relative seeking placement shall be the first placement to be considered and investigated." (§ 361.3, subd. (c)(1).) "The preference applies at the dispositional hearing and thereafter 'whenever a new placement of the child must be made. . . .' (§ 361.3, subd. (d).)" (*In re Lauren R.* (2007) 148 Cal.App.4th 841, 854, fn. omitted.)

Mother's reliance on section 361.3 is unavailing for two reasons. First, there was no "new placement" at the .26 hearing. At the .26 hearing, J.L. was living in foster care, and the court approved that continued placement. The statute does not apply for the additional reason that uncle never requested placement. As stated above, section 361.3 provides a preference for "the relative seeking placement[.]" (§ 361.3, subd. (c)(1); see also § 361.3, subd. (a) [preferential consideration "given to a request by a relative of the child for placement of the child with the relative"].) Shortly before the .26 hearing, the Agency reported no relatives other than aunt had "come forward to request that they be assessed for placement of [J.L.] in their home." Mother may have requested her brother be considered for placement, but there is no evidence *uncle* sought or requested

placement.[4] (Compare *In re R.T.* (2015) 232 Cal.App.4th 1284, 1293 [agency discouraged paternal aunt's request for placement but she remained interested in adoption].) Additionally, the Agency determined uncle was not "appropriate for placement" because he was "homeless, and financially unstable" and had visited J.L. only sporadically. Under the circumstances, it was not in J.L.'s best interest to be placed with uncle. (See *In re Lauren R., supra,* 148 Cal.App.4th at p. 855 [proposed placement with a relative must be in child's best interest].) We therefore reject mother's claim the court failed to apply section 361.3's preference for placement of a dependent child with a relative.

DISPOSITION

The order terminating C.L.'s parental rights as to J.L. is affirmed.

[4] According to the Agency, mother never provided uncle's contact information and had previously told the Agency she did not want "any other family member to care" for J.L.

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Jones, P.J.

We concur:

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Simons, J.

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Needham, J.

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